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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. MANUEL SANCHEZ POMPA, Defendant and Appellant.	C048938 (Sup.Ct. No. 04F02947)

A jury convicted defendant Manuel Sanchez Pompa of forcible sexual penetration with a foreign object (Pen. Code, § 289, subd. (a)(1))[1] and corporal injury on a former cohabitant (§ 273.5, subd. (a)). He was sentenced to state prison for consecutive terms totaling four years. The abstract of judgment incorrectly shows four years four months and should be corrected.

On appeal, defendant contends (1) he was improperly denied the right to cross-examine the victim, (2) the court abused its

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[1] References to undesignated sections are to the Penal Code.

discretion in allowing evidence of his prior uncharged assaultive conduct, (3) he is entitled to three additional days of presentence conduct credit, (4) the court erred in imposing a $20 court security fee, (5) imposition of consecutive terms violated the principles of *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403], and (6) Evidence Code section 1109 unconstitutionally lessens the prosecution's burden of proof. We reject defendant's claims and shall affirm the judgment.

FACTS

In August 2002, defendant and D. were romantically involved and moved into a home owned by D.'s parents. In May 2003, D. terminated the relationship and defendant moved out of the house. Defendant continued to come by the house about once a week, but he never stayed overnight.

Uncharged conduct

In June 2003, about a week or two after defendant had moved out of the house, D. and E.G., a coworker, stopped by her house for lunch. E.G. went into the bathroom and D. went into the dining room where she began going through her mail. Defendant walked into the house, said hello and asked whose car was in front. Before D. could answer, defendant obtained a knife from the kitchen and started yelling, "[T]hat fucker . . . needs to get out of this house." As E.G. came out of the bathroom, defendant held up the knife and screamed for him to get out. E.g. walked out the front door, defendant followed E.G., and D. went out the back door.

E.G. drove off, but returned when he received a cell phone call from D. asking him to come back and pick her up. E.G. did so and defendant gave chase in his car, attempting to run them off the road several times. E.G. managed to lose defendant on the freeway, but when he pulled into where he and D. worked defendant was waiting. Defendant tried to ram E.G.'s car, but E.G. eluded him, got to his workplace and reported the incident to the police.

Charged conduct

D. was dating J. in February 2004. About 2:00 a.m., on February 11, she and J. returned to her home from an evening out, and went to sleep. D. and J. were awakened by defendant hitting D. who, in turn, began striking back at defendant.

According to D., as she and defendant fought, J. fled. D. broke free from defendant and ran into the living room. Defendant followed, held her down and repeatedly inserted his fingers into her vagina, asking her if that was what she wanted. D. struggled, cried and asked defendant to stop, but he would not. After she threatened to call the police, defendant stopped the attack and ran out the back door.

According to J., defendant awakened J. and D. by pulling the blankets off them. As D. and defendant fought, J. dressed and ran out of the house. J. got into his car and was dialing 911 when defendant came running toward him. J. then drove off.

As a result of defendant's assault, D.'s lips were "busted," her arms and legs were bruised, she was scratched and had vaginal tearing. She was examined that morning at U.C.

Davis Medical Center by Dr. George Anderson, an expert in assault examinations. Anderson confirmed D.'s injuries, noting that she had four injuries to her labial area, which were not consistent with consensual intercourse. Anderson concluded that D.'s injuries were consistent with a forced manual attempt to penetrate her vagina.

Officer Robert Lindner arrived at D.'s home about 4:30 a.m. in response to a domestic violence call. He saw that she had cuts on her lips and that there was blood on the bed sheets and bedroom floor, which D. said was caused by defendant striking her.

D. admitted that in 2002, she was convicted of misdemeanor domestic violence against defendant.

Defendant testified that in February 2004, he and D. were dating and living together in D.'s home. During the day of February 11, defendant was visiting a friend in the Bay Area and was planning to leave from there and go to Los Angeles. However, his plans changed and he decided to return to Sacramento.

Defendant arrived at D.'s in the early morning hours of February 12 and saw a car he did not recognize parked behind D.'s car. Defendant had "a funny feeling" someone else was with D. Defendant was unable to find his keys, so rather than knock he removed the back door from its hinges and entered. Defendant walked into the bedroom and saw D. and J. in bed. He pulled back the covers and saw that they were naked. While defendant was screaming at J. to get out of the house, D. began striking

him on the chest. Although defendant was trying to block her blows, he "guessed" that he struck her because she said that he did. J. dressed and ran out of the house.

Defendant continued struggling with D. and she bit him. Defendant got the front door open, ran to his car and drove to his parent's home. Defendant denied inserting his fingers into D.'s vagina at any time during the struggle.

DISCUSSION

I

Defendant contends the trial court committed prejudicial error by denying him his Sixth Amendment right of confrontation during his cross-examination of D. We disagree.

Prior to D. testifying, the court ruled that she could be impeached with her prior misdemeanor conviction for domestic violence against defendant. However, defendant would not be permitted to go into the details of the conviction.

During D.'s cross-examination the following occurred: "Q. Is it true that you have a conviction from 2002 for misdemeanor domestic violence? A. Yes. Q. And [the defendant] is the victim in that case; is that right? A. That's correct. Q. And you're upset about the fact that you have a domestic violence conviction from 2002; aren't you? A. I'm not happy about it. Q. In fact, that's something you mentioned to the police officers when they were questioning you about the February 12th, 2004 incident; is that right?" (Pars. Omitted.)

At this point, the prosecutor requested to approach the bench to make an objection. Without inquiring as to the nature

of the objection, the court sustained it and stated that they would make a record later.

Later the prosecutor explained that his objection was based upon his expectation that defense counsel was going into the prohibited area of the conduct underlying the conviction. The court stated that it had been prepared to sustain the objection "based on the pretrial rulings regarding that area."

Defense counsel responded, "I believe the question was not going into the areas that was [sic] excluded, it was merely going to any biases on her part or motive because she -- I was not asking about the facts of her arrest or the facts of the conviction, just merely the fact that she was convicted and [the defendant] was a victim I believe that was proper to go into that and ask if she was angry about that."

The court stated that it had sustained the objection because her question regarding D.'s speaking to the officers about the conviction could have opened up a number of areas that would have violated the court's ruling. The court observed that such a circumstance had been avoided and asked counsel if she had anything else. Counsel replied, "No, your honor, not on that issue."

Defendant now argues that since his theory was that D. had falsely accused him of a sexual assault because she was still upset with him about the prior conviction, he should have been, but was not, permitted to cross-examine her to show a bias and motive for her accusation. This, he concludes, denied him his Sixth Amendment right to cross-examination. We find no error.

On cross-examination D. admitted that she was "not happy about" the prior conviction and the court did not strike this testimony. Later, the court explained that it had sustained the objection to further questioning along this line because it was concerned that the witness would go into areas precluded by the court's prior ruling. The court then asked counsel if she had anything else. Counsel realized that she did not "on that issue." Thus, not only did counsel get an admission from D. which was tantamount to showing that she was upset about the prior conviction, but counsel was also offered the opportunity to further address the issue, which she chose not to do. Consequently, and contrary to defendant's claim, the court did not deny him the right to cross-examine D.

II

Defendant contends that the court abused its discretion when it failed, pursuant to Evidence Code section 352, to exclude the evidence of the uncharged domestic violence which occurred in June 2003, involving D. and E.G. The record does not support the claim.

Evidence Code section 1109 permits evidence of uncharged acts of domestic violence to prove propensity to commit such acts unless the evidence is inadmissible under Evidence Code section 352. Evidence Code section 352 gives the court discretion to exclude relevant evidence where it will consume

undue consumption of time, or create substantial danger of undue prejudice, confusion of issues or mislead the jury.[2]

Prior to trial, the People sought the court's permission to admit evidence of the June 2003 incident in which defendant, at knife point, caused E.G. to leave D.'s house and then, after E.G. had returned in his car and rescued D., defendant chased them and attempted to run them off of the road. Defendant argued that, pursuant to Evidence Code section 352, the evidence should not be admitted because it was likely to confuse the jury and was more prejudicial than probative. The court disagreed and admitted the evidence.

Defendant argues that "the probability of confusing the jury because of this one isolated prior incident which did not result in any conviction, in which there was no act of violence toward the victim, and the primary use of which was not to show a disposition to commit domestic violence, but an unreasonable irrational jealousy, far outweigh[ed] any probative value. [Citation.]"

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[2] Evidence Code section 1109, subdivision (a)(1) provides that "in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by [Evidence Code] [s]ection 1101 if the evidence is not inadmissible pursuant to [Evidence Code] [s]ection 352."

Evidence Code section 352 states, "[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

First, although there was no conviction in the June 2003 incident, there was no chance of the jury confusing any issues in that incident with the one charged because counsel conceded during argument that defendant admitted in his testimony that the June incident was "pretty much like" what E.G. had testified. Thus, the jury would have no difficulty separating or confusing the facts of the incidents. Second, and contrary to defendant's claim, there was a direct act of violence against D. -- E.G. testified that defendant attempted to ram his car and run it off the road while D. was in the car. Finally, while it is correct that the prior incident tended to show that defendant became irrationally jealous when he found D. with another man, it was this irrational jealousy in similar circumstances which made the incident extremely probative of the charged domestic violence. Hence, the court's ruling was correct.

III

Defendant contends that he is entitled to three additional days of presentence conduct credits. We agree.

Section 2933.1, subdivision (a) limits the presentence conduct credits of persons convicted of a violent offense as defined in section 667.5, subdivision (c) to 15 percent. Section 289, subdivision (a) is a violent offense. (§ 667.5, subd. (c)(11).)

The trial court awarded defendant 46 days of presentence custody credits and three days of conduct credits. However, 15 percent of 46 is 6.9, which rounded to its lowest whole number as is required (*People v. Ramos* (1996) 50 Cal.App.4th 810, 815-

817), results in six. Consequently, defendant is entitled to three more days of conduct credit.

IV

Defendant contends the trial court erred in imposing a $20 court security fee pursuant to section 1468.5 because that fee is only applicable to Vehicle Code offenses. We disagree.

With emphasis by defendant, section 1468.5 provides in relevant part: "(a)(1) To ensure and maintain adequate funding for court security, a fee of twenty dollars ($20) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local orD.nce adopted pursuant to the Vehicle Code."

According to defendant, "A mere reading of the statute indicates that it applies only to Vehicle Code violations[,]" a conclusion which is confirmed by the section being placed in chapter 1, title II of the Penal Code, which deals with proceedings in misdemeanor and infraction cases. The argument is not persuasive.

Initially, we note that "'[t]itle or chapter headings are unofficial and do not alter the explicit scope, meaning, or intent of a statute.' [Citation.]" (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1119.)

More importantly, however, is the wording of the statute. The phrase, "except parking offenses as defined in subdivision

(i) of Section 1463,"[3] is an exclusion upon the Vehicle Code violations, which are included in among "traffic offense[s]." Thus without changing its meaning, section 1465.8 could be rephrased in pertinent part to read: "To ensure and maintain adequate funding for court security, a fee of twenty dollars ($20) shall be imposed on every conviction for a criminal offense, including a traffic offense involving a violation of a section of the Vehicle Code or any local orD.nce adopted pursuant to the Vehicle Code, except parking offenses as defined in subdivision (i) of Section 1463."

This reading, unlike that given the section by defendant, avoids making the phrase "a traffic offense" surplusage. (See *People v. Woodhead* (1987) 43 Cal.3d 1002, 1010 [statutory construction which render some words mere surplusage is to be avoided].) Consequently, we reject defendant's contention.

V

Defendant contends that the trial court's reliance upon facts not determined by a jury beyond a reasonable doubt to impose consecutive terms violated the requirements of *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403]. Defendant recognizes that *People v. Black* (2005) 35 Cal.4th 1238, rejected his position; however, urges that *Black* was wrongly decided and

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[3] Section 1463.5, subdivision (i) states: "'Parking offense' means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation."

is raising the issue to preserve it for federal review. We are bound by *Black* (*Auto Equity Sales, Inc. v. Superior Court* (1962 57 Cal.2d 450, 455) and, therefore, reject the contention.

VI

Defendant contends that Evidence Code section 1109 violates due process and lessens the People's burden of proof. Again, defendant recognizes that several authorities have rejected his position and he is raising the issue to preserve it for federal review. Based upon the cited authorities, the contention is rejected.

VII

The People have observed that the trial court sentenced defendant to a term of four years; however, the abstract of judgment incorrectly reflects that a term of four years four months was imposed. We shall order the abstract corrected.

DISPOSITION

Defendant is hereby credited with three additional days of presentence custody credit. The superior court is directed to prepare an amended abstract of judgment reflecting this change as well as correcting the sentence to show a term of four years, and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

MORRISON, J.

We concur:

RAYE, Acting P.J.

BUTZ, J.